

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08CV5-1-MU

LEONARDO PAZ-ORTORNO,

Petitioner,

v.

HERBERT JACKSON, Admin.,

Respondent.

ORDER

THIS MATTER comes before the Court for an initial review of Petitioner's Petition Under 28 U.S.C. § 2254, filed January 4, 2008.

A prisoner is required to exhaust the remedies available to him in the state courts before he files a writ of habeas corpus in the federal courts. 28 U.S.C. § 2254(b)(1)(A). The United States Supreme Court has held that § 2254's exhaustion requirement requires "state prisoners to give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838 (1999). This "one full opportunity" includes filing petitions for discretionary review when that review is part of the ordinary appellate procedure in the State. Id.

In North Carolina, a petitioner may satisfy § 2254's exhaustion requirement by directly appealing his conviction to the North Carolina Court of Appeals and then petitioning the North Carolina Supreme Court for discretionary review or by filing a state post-conviction proceeding and petitioning the North Carolina Court of Appeals for a writ of certiorari.

Petitioner indicates in his federal habeas petition that he has not directly appealed his

state court conviction. In addition, it appears from Petitioner's filing that he has not filed any state post-conviction proceedings attacking his sentence and conviction.¹ Petitioner therefore has not fully exhaust his state court remedies and his federal habeas petition must be dismissed.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Petition for a Writ of Habeas Corpus is **DISMISSED without prejudice** for failure to exhaust his state court remedies.

Signed: January 9, 2008

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge



¹ The Court takes judicial notice that the Gaston Superior Court docket has no record of a Motion for Appropriate Relief being filed with that court.